FILED

MAY 26 2016

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES W. MYART, JR,	)
	)
	)
	)
PLAINTIFF	)
	)
v.	) **No. SA16CA0455 (OG)**
	)
IVY TAYLOR, MAYOR, CITY OF SAN ANTONIO, IN HER OFFICIAL (1) **CAPACITY, SHERYL SCULLEY, CITY MANAGER, CITY OF SAN ANTONIO, IN HER OFFICIAL CAPACITY AND INDIVIDUALLY, WILLIAM MCMANUS, IN HIS OFFICIAL CAPACITY AND INDIVIDUALLY, ERIK WALSH, DEPUTY CITY MANAGER, IN HIS OFFICIAL CAPACITY AND INDIVIDUALLY, MARTHA ZEPEDA, CITY ATTORNEY IN HER OFFICIAL CAPACITY AND INDIVIDUALLY, OFFICER RYAN MCFARLAND, OFFICER ADAM STALKER, OFFICER MICHAEL BAGGETT, OFFICER GILBERT GONZALEZ, AND OFFICER ASHLEA BRUSTER, OFFICER GEORGE MORALES, ALL INDIVIDUALLY AND IN THEIR OFFICAL CAPACITIES. CITY OF SAN ANTONIO A MUNICIPAL CORPORATION**	)

FIRST AMENDED COMPLAINT

Come the Plaintiff, JAMES W. MYART, JR. (hereinafter "Plaintiff" or "Myart") and

(1) See ~~Affidavit~~ Declaration of James Myart ~~of Att...~~ ...ick, city Counsel/mem... Att # 2, same being incorporated herein as if fully set forth [illegible]

for cause of action would state as follows:

I. INTRODUCTION

This action arises under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution; under federal law, specifically, 42 U.S.C. §§1983 and 1988; under the Texas governmental tort liability statutes; under Texas common law for intentional and/or negligent infliction of emotional distress, negligent supervision, gross negligence, assault, false imprisonment, false arrest, and civil conspiracy.

While the individual Defendants were acting in the scope of their employment and under color of state law, they exercised the excessive use of force, official oppression filing of false reports against the Plaintiff. The Defendants' actions caused severe and permanent injury to the Plaintiff.

Action is also brought against the City of San Antonio for its failure to properly train and supervise the individual Defendants in the proper use of force and techniques used to secure the [person of a detainee and its establishment of policies, procedures, practices, and customs regarding arrests that result in the excessive use of force.

More, Defendants Scully, McManus, Sepeda, and Walsh are being sued in their individual capacities for the reason that they have perpetuated and condoned, for years, the illegal use of force against black and brown persons by City of San Antonio law enforcement officials, to such an extent that the illegal use of force and excessive have become a pattern and practice of the Defendants and the City of San Antonio.

II. JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1332, 1343, and 1367, and venue is properly set in the United States District Court for the Western district of Texas, San Antonio Division pursuant to 28 U.S.C. §1391 and 42 USC 1983.

2. The causes of action alleged herein arise from factual allegations occurring in this judicial district. This is a federal question matter.

3. On information and belief, it is alleged that each of the named Defendants resides in this judicial district

4. Plaintiff resides in the state of Texas.

5. The amount in controversy is in excess of $5,000.000.

III. PARTIES

A. Plaintiff

6. The Plaintiff, JAMES W. MYART, JR., is a citizen and resident of San Antonio Texas.

.

B. City of San Antonio Defendants

7. The Defendant, IVY TAYLOR, Is the popularly elected Mayor of the City of San Antonio, TEXAS and was Mayor at the time of the use of excessive force, abuse, refusal to provide medical care and the negligence of running Plaintiff down by a San Antonio police officer.

8. The Defendant, Sheryl Sculley, is the City Manager of the City of

San Antonio and she is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in her capacity as City Manager employed by Defendant City of San Antonio and was acting under color of state law.

9. The Defendant, Erik Walsh, is the Deputy City Manager of the City of San Antonio over all law enforcement of Defendant City of San Antonio and he is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in his capacity as Deputy City Manager employed by Defendant City of San Antonio and was acting under color of state law.

10. The Defendant, Martha Sepeda, is the City Attorney of the City of San Antonio and she is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in her capacity as City Attorney employed by Defendant City of San Antonio and was acting under color of state law.

11. The Defendant, Ryan McFarlan, is an officer of the City of San Antonio and he is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in his capacity as a law enforcement official and employed by Defendant City of San Antonio and was acting under color of state law.

12. The Defendant, Adam Stalker, is an officer of the City of San Antonio and he is a citizen and resident of San Antonio, Bexar County Texas,

and was at all times material to the allegations in this Complaint, acting in his capacity as a law enforcement official and employed by Defendant City of San Antonio and was acting under color of state law.

13. The Defendant, Michael Baggett, is an officer of the City of San Antonio and he is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in his capacity as a law enforcement official and employed by Defendant City of San Antonio and was acting under color of state law.

14. The Defendant, Gilbert Gonzalez, is an officer of the City of San Antonio and he is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in his capacity as a law enforcement official and employed by Defendant City of San Antonio and was acting under color of state law.

15. The Defendant, Ashlea Bruster, is an officer of the City of San Antonio and he is a citizen and resident of San Antonio, Bexar County Texas, and was at all times material to the allegations in this Complaint, acting in his capacity as a law enforcement official and employed by Defendant City of San Antonio and was acting under color of state law.

16. The Defendant, CITY OF SAN ANTONIO, is a political subdivision of the State of Texas, for which all officer Defendants are employed as police officers; Defendant McManus serve as Chief of Police. City of San Antonio is the political subdivision of the State of Texas responsible for the training and

supervision of all officer Defendants. City of San Antonio has established or delegated to Defendant McManus the responsibility for establishing and implementing policies, practices, procedures, and customs used by law enforcement officers employed by City of San Antonio regarding filing of false reports, arrests and the use of force.

IV. FACTS

22. On or about February 1, 2015, Plaintiff was arrested and taken to the Defendant City of San Antonio Magistrate's office where he was beaten by officer Defendants and refused medical care.

23. on or about March 25, 2016 – **Motorist - Defendant George Morales Pedestrian Myart accident.** Plaintiff claims that Morales assumed full-time responsibility as a law enforcement official when Defendant Morales saw Plaintiff Myart crossing the freeway as a jaywalker. Defendant Morales saw Plaintiff jaywalking and thus entered a crime scene, a fact that made Defendant active as a Defendant City of San Antonio police. Thus, the Defendant City of San Antonio city is liable for a negligent Tort under the Texas Tort Claims Act. Plaintiff Myart claims that the reporting police officer wrote a slanted report to protect his colleague - THE THIN BLUE LINE. Plaintiff Myart also contends that the Traffic Investigation Unit did not appear at the scene also in an effort to protect Defendant Morales.

24. On or about April 26, 2016 - **Beating of Myart at City of San Antonio, Office of Magistrate Detention Center.** A video exist of the beating,

same being incorporated herein as if fully presented verbatim. The video is clear that Myart was severely brutalized, beaten, and that the Defendant City of San Antonino by and through its' employees, Center refused to provide adequate medical care to an obviously distressed victim, detainee. The acts of at least seven (7) Detention guards constituted violation of the Fourth and Fourteenth Amendments to the USA Constitution, a hate crime, assault, excessive force, abuse, violations of the Texas Penal Code, Sections 39.01 - 39.06, Official Oppression.

23. Upon leaving the Detention Center, Plaintiff immediately went to Dr. Leo Edwards who treated him from his injuries. Dr. Edwards concludes that Plaintiff Myart, suffering Congestive Heart Failure, Chronic Diabetes, High Blood Pressure and exasperated injuries, "should have been taken to the hospital." Dr. Edwards's medical narrative is attached hereto, marked Attachment A; same being incorporated herein as if set forth fully.

V. CAUSES OF ACTION

COUNT I

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983 (General Allegations)

24. Plaintiff re-alleges and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

25. In committing the acts complained of herein, Defendants acted under color of state law to deprive Plaintiff of certain constitutionally protected rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of

the United States including, but not limited to: a) the right to be free from unreasonable searches and seizures; b) the right not to be deprived of liberty without due process of law; c) the right not to be deprived of property without due process of law; d) the right to be free from excessive use of force by persons acting under color of state law; e) the right to be free from false arrest; and f) the right to just compensation for taking of property.

26. In violating Plaintiff' rights as set forth above and other rights that will be proven at trial, Defendants acted under color of state law and conducted an unauthorized, warrantless illegal stop, search, and seizure of Plaintiff. The illegal and warrantless stop set into motion the chain of events that led to an unauthorized and warrantless illegal search and seizure and the use of excessive force by Defendants, in violation of Plaintiff' rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

27. As a direct and proximate result of the violation of their constitutional rights by the Defendants, Plaintiff suffered general and special damages as alleged in this Complaint and are entitled to relief under 42 U.S.C § 1983.

28. The conduct of Defendants was willful, malicious, oppressive and/or reckless, and was of such a nature that punitive damages should be imposed in an amount commensurate with the wrongful acts alleged herein.

COUNT II

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983
(Failure to Implement Appropriate Policies, Customs and Practices)

29. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

30. Defendant William McManus as Chief of Police of the San Antonio Police Department, and the Defendant, City of San Antonio, implicitly or explicitly adopted and implemented careless and reckless policies, customs, or practices, that included, among other things, of allowing employees of the San Antonio Police Department to abuse citizens and to employ excessive force without any reasonable training and in such a way as to cause the destruction of citizens' lives without lawful justification.

31. Defendant William McManus, in his capacity as Chief of Police of the San Antonio Police Department, implicitly or explicitly adopted and implemented a careless and reckless policy, custom, or practice of allowing employees of the Police Department to commonly allow police officers to illegally injure innocent and compliant citizens through the use of excessive, sometimes lethal force where less severe alternatives existed.

32. The failure of the Chef of Police William McManus and Defendant City of San Antonio to adequately train and supervise the Defendants to deliberate indifference to the rights of the Plaintiff Myart to be free from excessive force and unreasonable seizures under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

33. The failure of the Chief of Police William McManus and Defendant City of Sab Antonito adequately train and supervise all law enforcement

Defendants amounts to deliberate indifference to the rights of Plaintiff Myart and all other citizens to be free from excessive force and unreasonable seizures under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

34. paragraphs 1-23 of this Complaint.

30. Defendant William McManus as Chief of Police of the San Antonio Police Department, and the Defendant, City of San Antonio, implicitly or explicitly adopted and implemented careless and reckless policies, customs, or practices, that included, among other things, of allowing employees of the San Antonio Police Department to abuse citizens and to employ excessive force without any reasonable training and in such a way as to cause the destruction of citizens' lives without lawful justification.

31. Defendants Sheryl Sculley and Erik Walsh, in their capacity as City Manager, Deputy City Mangager and supervisor of the Chief of Police of the San Antonio Police Department, and Defendant Martha Zepeda, City Attorney have all explicitly adopted and implemented a careless and reckless policy, custom, or practice of allowing employees of the Police Department to commonly allow police officers to illegally injure innocent and compliant citizens through the use of excessive, sometimes lethal force where less severe alternatives existed.

32. The failure of the Defendants Sculley, Walsh, Zepeda, McManus and Defendant City of San Antonio to adequately train and supervise the law Enforcement Defendants led all Defendants to be deliberately indifferent to the

rights of the Plaintiff Myart to be free from excessive force and unreasonable seizures and to be provide adequate medical care of a detainee, under the Fourth, Fifth, and Fourteenth Amendments to Constitution of the United States.

33. The failure of and Defendants Sculley, Walsh, McManus, Zepeda and the City of San Antonito adequately train and supervise all law enforcement Defendants amounts to deliberate indifference to the rights of Plaintiff Myart and all other citizens to be free from excessive force and unreasonable seizures under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

34. As a result of this deliberate indifference to Plaintiff Myart's rights, Plaintiff Myart permanently suffered personal injuries and he is entitled to relief under 42 U.S.C. §1983.

35. In committing the acts complained of herein, Defendants acted under color of state law to deprive Plaintiff as alleged herein of certain constitutionally protected rights including, but not limited to: a) the right to be free from unreasonable searches and seizures; b) the right not to be deprived of liberty without due process of law; c) the right not to be deprived of property without due process of law; d) the right to be free from excessive use of force by persons acting under color of state law; and e) the right to just compensation for taking of property.

COUNT III

Violation of Civil Rights Pursuant to Title 42 U.S.C. §1983
(Use of Excessive Force)

36. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

37. The Defendant, City of San Antonio, has adopted policies, procedures, practices or customs within the San Antonio Police Department that allow, among other things, the use of excessive force when other more reasonable and less drastic methods are available.

38. The actions of Defendant City of San Antonio, Texas amount to deliberate indifference to the rights of Plaintiff Myart to be free of excessive force and unreasonable seizures under the Fourth and Fourteenth Amendments to the Constitution of the United States.

39. As a result of the deliberate indifference to the Plaintiff Myart's rights by the City of San Antonio, Texas and its agents, servants and employees, Plaintiff Myart suffered serious personal injuries ,and he are entitled to relief under 42 U.S.C. §1983.

COUNT IV

TEXAS Governmental Tort Liability Act
Pursuant to T.C.A. §29-20-101/TEXAS Common Law
(Negligence)

40. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

41. Each Defendant owed Plaintiff a duty to use due care at or about the times of the aforementioned incident.

42. In committing the aforementioned acts and/or omissions, each

Defendant negligently breached said duty to use due care, which directly and proximately resulted in the injuries and damages to the Plaintiff as alleged herein.

COUNT V

Texas Governmental Tort Liability Act
(Negligent Supervision)

43. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

44. Each Defendant owed Plaintiff a duty to use due care at or about the time of the aforementioned incidents.

45. Defendant City of San Antonio negligently supervised a" law enforcement Defendants by failing to provide proper training and outline proper procedure in confronting domestic animals.

46. Defendants Scully, Walsh and Sepeda negligently supervised Defendants, by failing to provide proper training and outline proper procedure in use of an unknown and as yet unnamed Defendant, negligently supervised the Law Enforcement Defendants, by failing to provide proper training and outline proper procedure in dispatching information.

47. In committing the aforementioned acts or omissions, each Defendant negligently breached said duty to use due care, which directly and proximately resulted in the injuries and damages to Plaintiff as alleged herein.

COUNT VI

TEXAS Governmental Tort Liability Act
Pursuant to T.C.A. §29-20-101/Texas Common Law
(Conspiracy)

48. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

49. The Defendants present at the aforementioned incident subsequently participated in a common design through a concert of action to protect fellow officers by making overtly false statements in their reports and to the media regarding the circumstances surrounding the aforementioned incident.

50. In committing the aforementioned acts, each Defendant directly and proximately injured, damaged, libeled, and caused emotional distress to the Plaintiff herein.

Count VII
Texas Common Law
(Assault)

51. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

52. Plaintiff aver that the actions of the Defendants breached a duty of care owed to Plaintiff to not assault them or cause them physical harm or injury, except to the extent allowed by law.

53. Plaintiff aver that the Defendants knowingly, wantonly, intentionally, and with gross disregard for the rights of Plaintiff, assaulted Plaintiff Myart them beating him and throwing him from a wheel chair Further, Plaintiff Myart was slammed to the pavement in the cell, hog tied and his fingers were sprang and he was kicked him the face.

54. Further, Plaintiff Brandon Hayden was shoved into the back seat of

a patrol car and left handcuffed and on his back for more than twenty minutes, in fear.

55. As a direct and proximate result of the acts of the Defendants, Plaintiff suffered both physical and mental injuries and are entitled to relief.

COUNT VIII

Texas Penal Code Sections 38.01 – 39.06

OFFICIAL OPPRESSION

56. Plaintiff re-allege and incorporate herein by reference the allegations set forth in paragraphs 1-23 of this Complaint.

57. All Defendants violated the Texas Penal Code on abuse of office and official oppression.

PRAYERS FOR RELIEF

WHEREFORE, the above premises considered, Plaintiff demand:

1. That process issue to the Defendants and that they be required to answer in the time allowed by law.

2. That judgment be rendered in favor of the Plaintiff and against the Defendants on all causes of action asserted herein.

3. That Plaintiff be awarded those damages to which it may appear they are entitled by the proof submitted in this cause for their physical and mental pain and suffering, both past and future; permanent injury and disability; loss of enjoyment of life; loss of their personality, Patton; and medical and psychological expenses, both past and future.

4. That Plaintiff be awarded compensatory damages in the amount of $5,000, 000, 00 and punitive damages against the Individual Defendants.

5. That Plaintiff be awarded reasonable expenses incurred in this litigation, including reasonable attorney and expert fees, pursuant to 42 U.S.C. § 1988 (b) and (c).

6. That the Plaintiff receive any other further and general including legal pre and post judgment interest, to which it may appear he is entitled.

7. A jury for the trial of this matter.

Respectfully submitted,

James W. Myart, Jr., Pro Se
323 Preston Ave.
San Antonio, Texas 78210
830-469-5155

CERTIFICATE OF SERVICE

I certify that a copy of the pleading has been served on all Defendants via Ken Clark

IN THE UNITED STATES DISTRICT COURT
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JAMES W. MYART, JR,)
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PLAINTIFF)
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v.) No. SA16CA0455 (OG)
)
IVY TAYLOR, MAYOR, CITY OF)
SAN ANTONIO, IN HER OFFICIAL)
CcAPACITY, SHERYL SCULLEY, CITY)
MANAGER, CITY OF SAN ANTONIO)
IN HER OFFICIAL CAPACITY AND)
INDIVIDUALLY, WILLIAM MCMANUS,)
IN HIS OFFICIAL CAPACITY AND)
INDIVIDUAL LY, ERIK WALSH,)
DEPUTY CITY MANAGER, IN HIS)
OFFICIAL AND INDIVIDUALLY,)
MARTHA ZEPEDA, CITY ATTORNEY)
IN HER OFFICIAL AND)
INDIVIDUALLY,)
OFFICER RYAN MCFARLAND,)
OFFICER ADAM STALKER,)
OFFICER MICHAEL BAGGETT,)
OFFICER GILBERT GONZALEZ,)
AND OFFICER ASHLEA BRUSTER,)
OFFICER GEORGE MORALES.)
CITY OF SAN ANTONIO)
A MUNICIPAL CORPORATION)

DECLARATION OF JAMES W. MYART, JR.

My name is James W Myart, Jr.; I am over the age of eighteen and I am capable of making this Declaration. This declaration is beinme under the penalities of purury.

I say the following:

"I have had several conversons with Mr. Alan Warrick, member, SaAtonio City Counsel in connection with my automobile accifdent on March 25, 016 and the beating I sustained at rhe City of San Antonio Magistrate's office on Apr26, 2016."

" Mr. Warrick called me about the incidents and the City's desire to settle the case."

"Mr. Warrick called me and said, 'I saw the video tape of your beating by our employees. It was horrible.' 'James, what do you want me to do about it?'

"Mr. Warrick then said, 'You know that they can not offer you more money until you file a federal law suit.' I said, 'I plan to do just that Alan.'

"I then told Mr. Warrick that 'I do not want you to do anything for me, all I have ever wanted from you is good representation. But, you ld tell the ty manager to send this case to mediation.'"

" I concluded my conversation with Mr. Wark by saying'Just do the right thing Alan as my city councilman and what you think is best after seeing that video and, Alan, you and I should not speak again aout this issue becasue one of those idiots down there will use u of collussion.'"

"We then said bye and hung up."

"I have nit spoken with Mr. Warrick since that phone l to me from him."

EXHIBIT A

LEO K EDWARDS, JR., M.D.
2011 E. HOUSTON #104-C
SAN ANTONIO, TX 78202
PHONE: 210-225-5047 FAX: 210-225-5040

Name	Myart, James W
DOB	10/04/1954
Account#	010748
MRN	10748

CHIEF COMPLAINT:
HAS CONSTANT MIGRAINE HEADACHES FROM HIS FALL
MED REFILLS
STILL HAS HAND, ROTATOR CUFF, AND HEAD PAIN

HISTORY OF PRESENT ILLNESS:
On 05/25/2016, James Myart, a 61 year old male presented with:

--61-year-old gentleman coming in for follow-up after of the traumatic fall that he had when he was incarcerated recently by the police and was flipped out of a wheelchair (Followup visit)
.

PAST HISTORY:

Chronic Illnesses - diabetes, hypertension, chronic alcohol excess.

Other: Hospitalization admission show Baptist in April 2014 revealed that he had an acute stroke.

MEDICATIONS HISTORY:

Current medications prescribed to the patient are:
1. aspirin 81 mg tablet, effervescent, 1 BY MOUTH DAILY
2. Accu-Chek Aviva Plus Meter misc, use tid
3. Accu-Chek Aviva Plus test strp strip, use one strip tid
4. Lancets,Ultra Thin 26 gauge misc, use one lancet tid
5. Insulin Syringe 1/2 mL 30 x 5/16 syringe, USE qid
6. Kristalose 20 gram packet, ONE PACKAGE DAILY
7. Restoril 15 mg capsule, 1 BY MOUTH AT BEDTIME
8. Levemir FlexTouch 100 unit/mL (3 mL) insulin pen, inject 30 units at bedtime
9. Humalog 100 unit/mL solution, 10 UNITS WITH EACH MEAL
10. Tylenol-Codeine #3 300 mg-30 mg tablet, 1 BY MOUTH TWICE DAILY
11. Novolog Flexpen 100 unit/mL subcutaneous, 15 units with each meals
12. lisinopril 10 mg tablet, 1 BY MOUTH DAILY
13. Zocor 10 mg tablet, 1 BY MOUTH AT BEDTIME
14. Lantus Solostar 100 unit/mL (3 mL) subcutaneous insulin pen, 30 UNITS AT BED TIME
15. Lyrica 100 mg capsule, 1 BY MOUTH TWICE DAILY
16. Brintellix 10 mg tablet, 1 BY MOUTH DAILY

ALLERGIES:
MEDICATION:
1. IODINE

HEALTH MAINTENANCE HISTORY:
>>
>>
Testicular Exam: 05/25/16

SOCIAL HISTORY:
Marital Status - Alcohol Use - denies drinking
Smoking - smokes

FAMILY HISTORY:

ADVANCED DIRECTIVES:
Code Status - Code A--(Full Resuscitation)

REVIEW OF SYSTEMS:
GENERAL - complains of headaches primarily on the right side of the head where he struck it against the ground when his chair was slipped over
SKIN - No changes in turgor or texture. No rashes. No lesions.
EYES - No changes in vision.
ENT - No changes in hearing. No nasal drainage or congestion. No inhalant allergies. No sore throat or hoarseness.
NECK - Denies pain or swelling
RESPIRATORY - No cough, wheezing or dyspnea.
CARDIOVASCULAR - No chest pain, palpitations or edema. No orthopnea or PND. No claudication.
GASTROINTESTINAL - No nausea, vomiting or changes in bowel patterns. No hematochezia or melena. No Hx of hepatitis or jaundice.
MUSCULOSKELETAL - has problems with pain in the left shoulder of the right knee also has pain in the left hand
NEUROLOGICAL - No seizures or syncope. No paresthesias, tremor or weakness. No headache or confusion.
PSYCHIATRIC - less anxiety than he had in the distant past but having somewhat issues with anxiety
ENDOCRINE - No polydipsia or polyuria. Weight and appetite stable. No cold or heat intolerance.
HEMATOLOGIC/ONCOLOGIC - denies easy bruising, bleeding or recurrent infections

VITAL SIGNS:
B/P - 135/80 Sitting, Left arm, regular cuff
Pulse - 78
Respiration - 16
Weight - 278.00000 lbs.
Height - 68 inches
Glucose: 433
BMI- 42.36 42.36
Weight Change: 10.00 lbs. gained since 04/27/16
EXAMINATION:
CONSTITUTIONAL - well-developed male in no acute distress does has some problems with pain in the shoulder but also has pain in the left knee with some swelling in the knee area as well as the lower leg and some pain in the fingers on the left-hand with no swelling but d

SKIN - Normal turgor and texture. No suspicious lesions.

HEAD - tenderness over the scalp area and the for head area on the right side of his head no evidence of any ecchymosis but still tender to touch. No TMJ symptomatology no deformity

EYE - PERRLA, EOMI, anicteric sclera

ENT - has some issues with the bridge of his nose in the inside of the nose a because of the fact that he says that some type of way they grabbed him where they injured the nose and the septum area but produced no deformity

NECK - No masses, lymphadenopathy or thyroid abnormality.

CHEST - Clear to auscultation and percussion. Effort normal.

BREAST - deferred

CARDIAC - Regular rate and rhythm. No murmur, gallop, rub or click. No JVD or carotid bruits.

ABDOMEN - soft, nontender, nondistended. No masses or organomegaly.

BACK - no cva or spinal tenderness and 28 thank you

GENITALIA - Normal male genitalia. No masses or hernias.

EXTREMITIES - there problems with the left shoulder at this pedicle point time in the sense of having soreness in the area range of motion is a bit reduced says that he cannot fully elevate the shoulder. Most of the pain is to the anterior aspect of the shoulder

NEUROLOGICAL - awake and alert gait is pretty much normal but he still having problems with his knee making it a bit slower than what it should be and definitely more comfortable

PSYCHIATRIC - Appropriate mood and effect

IMMUNOLOGIC - No lymphadenopathy.

Assessment and plan

BMI is 42.27 and she's gained about 10 pounds since the last visitation so we need to watch that

Hypertension on one reading but then settled down to be normal pressure after while

At this point time it's become very clear about the injuries that he sustained when his wheelchair was flipped over forward recently by a car. He sustained injury to his for head area on the right-hand side as well as having injury to the left shoulder and left knee as well as the left hand. He still has a great deal of tenderness in each of those areas. He has been seen at the University health system and they evaluated him at that particular point in time. At this moment he has decreased range of motion of the left shoulder as well as having pain in the area. He also has problems with the knee and the sense of being tender to touch has some swelling in the area and he reports some mobility issues in the sense that it feels as if it' s too loose in the area and is becomes very uncomfortable for him when he walks around for Fairmont distances. My concern is is that he really does need further evaluation of both of these areas because of the fact that my concern is making sure that he does not have a rotator cuff tear in the right shoulder and also having more significant injury to the knee such as a meniscus tear or a ACL injury. At this point time , we'll continue to treat with medications for pain and inflammation and see how well he does as time goes on and hopefully he will avoid any type of surgical intervention but if necessary. May need to have

Patient: MYART, JAMES MRNO: 10748 DOB: 10/04/1954 - Continued

surgical intervention to take care of these problems. In terms of the head injury and probably he had the trauma to the head and he says that he's not sure as to whether or not it resulted in injury that would correspond to a concussion but he did have the trauma bad headaches that still persisted at this point time and also some compromise in his ability to concentrate because of the pain. So he is somewhat still held prisoner by this painful problems with his head. And so at this point time we'll continue with the medications to see if we get this under better control and also we'll see what we can do to get the evaluation was done at the University health system because of the fact that they did x-rays and other studies and is no point in repeating those things at this pedicle point in time. The last problem is his left hand and although there is no deformities of the fingers or any significant swelling his grip is decreased in that hand and also is very tender to touch at the MP junction and so at this point time we'll treat him as we have continued to do with that anti-inflammatories time and medications and see how this area heals as time goes on. He says that he went to the University health system and there was no fracture of the bone but still has pain so we'll just wait and see how he does. If there is no improvement in the next few weeks then we may need to have him see an orthopedist for further evaluation of this process as well.

So our plan is basically to continue observing him and seeing how well he does with the overall management

In terms of the diabetes apparently his sugars were really quite elevated at the time. Of his incarceration and the values were between 5 and 700 from what I understand and they're doing better at this point time since we gave him medications for the management and will continue on this medication

The blood pressures variable at this point time and may have impact upon how he feels and headaches and so we'll continue to watch this. This has never been a problem for him is just more of a problem since she's had this fall and injury

He'll follow-up with us in next couple weeks

Entered by: Leo K. Edwards, M.D.

Electronically signed by Leo K. Edwards, M.D. 05/25/2016 11:55:04

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SAN ANTONIO, IN HER OFFICIAL)
CAPACITY, SHERYL SCULLEY, CITY)
MANAGER, CITY OF SAN ANTONIO,)
IN HER OFFICIAL CAPACITY AND)
INDIVIDUALLY, WILLIAM MCMANUS,)
IN HIS OFFICIAL CAPACITY AND)
INDIVIDUALLY, ERIK WALSH,)
DEPUTY CITY MANAGER, IN HIS)
OFFICIAL CAPACITY AND)
INDIVIDUALLY,)
MARTHA ZEPEDA, CITY ATTORNEY)
IN HER OFFICIAL CAPACITY AND)
INDIVIDUALLY,)
OFFICER RYAN MCFARLAND,)
OFFICER ADAM STALKER,)
OFFICER MICHAEL BAGGETT,)
OFFICER GILBERT GONZALEZ,)
AND OFFICER ASHLEA BRUSTER,)
OFFICER GEORGE MORALES, ALL)
INDIVIDUALLY AND IN THEIR)
OFFICAL CAPACITIES.)
CITY OF SAN ANTONIO)
A MUNICIPAL CORPORATION)

AFFIDAVIT OF JAMES W. MYART, JR.

My name is James Myart; I am over the age of 18 and capable of making this affidavit as I have personal knowledge of all facts hereinafter stated:

"I was run over by Geroge Morales, a SAPD officer, om Marchj 25, 2016. I sustained multiple injuries; and the medical records were given to Martha Sepeda, City Attorne;

I am the sole proprieter of Myart Consultiug Group.; a small business registered DBA is on file inthe office of the District Clerk, County of Bexar.

Since the beating at the hands of City of San Antonio police on April 26, 2016, I have been unable to work, due to physical and emotional damage sustained at the City Magistrate's office on April 26, 2016;

A contract for services from Willis Construction that would have earned Myart Consulting Group approximately $30,000.00; but same was lost due to injuries sustained on April 26, 2016. See affidavit of Tony Willis attached hereto; same being incorporated herein as if fully set forth verbatim.

A contract for services from Thompson Harrison Plumbing Company, Owner Otto Thompson Harrison, that would have earned Myart Consulting Group and James Myart, Jr. approximately $20,000.00; but same was lost due to injuries sustained by Myart on April 26, 2016. See affividavit of Ottoo Thompson Harrison; attached hereto; same being incorporated herein as if fully set forth verbatim.

Myart Consulting Group was suppose to go to Tillery, South Carolina, to meet with Gary Grant involving a back farmer lawsuit. The casd is valued at $1.5 Million dollars of which Myart

Consulting group would have earned $500,000.00.

The following decribes Myart Consulting Group. This ad copy appearsin the San Antonio Observer on a weekly basis, except right now, I can not afford to pay forthis business ad which cost $500.00 per week. See ad on the internet as follows:

MYART CONSULTING GROUP **CALL US AT 830-469-5155**

"When James Myart was a hard, smart fighting civil rights attorney; he won justice and millions of dollars for his clients." That's a fact.

SERVICES PROVIDED

"The Best in San Antonio"

- **PAROLE PACKAGING** **Get out of Jail**
- **POLITICAL CONSULTING** **Win your race**
- **ATTORNEY REFERRAL SERVICE** **Find a Great Lawyer for your case**
- **CONTRACT DEVELOPMENT AND NEGOTIATIONS**
- **AGENCY REPRESENTATION** **He can make you a millionaire**
- **MOTIVATIONAL SPEAKING** **Experienced, charismatic stunning speaker**

TESTIMONIALS FOR JAMES W. MYART, JR., BA, MA, JD

" I have known James since he was a teenager residing in Denver Heights, one of several community incubators in San Antonio known for producing top talent. I speculate that is why Mr. Myart choose to attend law school so that he could optimize his gift of vision and fairness for those whose opportunities may be limited and may not have the influence or position to change their circumstance.".

-Anthony C. Edwards, Retired, Former Executive, CPS Energy.

"As a lifelong resident of San Antonio, James Myart knows the local political arena extremely well. He's been in the ring, and he has the scars to prove it. Whether in the grassroots community or at City Hall, James has the intelligence and drive to go the distance."

-Jonathan Gurwitz, Director of Public Affairs KGBTexas Communications

"James Myart is a phenomenal negotiator and legal communicator. He handled my radio contractual negotiations from 1993 to 2001 in San Antonio with great care. His efforts exceeded my, already high, expectations."

-Sonny Melendrez, Speaker – Broadcaster – Author

The medical record of Dr. Leo Edwards is attached hereto, marked Exhibit 3; same being incorporated herein as if fully set forth verbatim.

AFFIANT SAYETH FURTHER NOT.

James W. Myart, Jr.

SWORN AND SUBSCRIBED BEFORE ME THIS **25TH OF MAY, 2016.**

Notary Public

My Commission Expires 3/21/2020

NOTARY PUBLIC STATE OF TEXAS

MICHELLE J [illegible]OUTTE
Notary Public St[illegible] of Texas
My Commission # [illegible]589479
My Comm. Exp. Ma[illegible] 21, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES W. MYART, JR,)
)
)
)
PLAINTIFF)
)
v.) No. SA16CA0455 (OG)
)
IVY TAYLOR, MAYOR, CITY OF)
SAN ANTONIO, IN HER OFFICIAL)
CcAPACITY, SHERYL SCULLEY, CITY)
MANAGER, CITY OF SAN ANTONIO)
IN HER OFFICIAL CAPACITY AND)
INDIVIDUALLY, WILLIAM MCMANUS,)
IN HIS OFFICIAL CAPACITY AND)
INDIVIDUAL LY, ERIK WALSH,)
DEPUTY CITY MANAGER, IN HIS)
OFFICIAL AND INDIVIDUALLY,)
MARTHA ZEPEDA, CITY ATTORNEY)
IN HER OFFICIAL AND)
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OFFICER RYAN MCFARLAND,)
OFFICER ADAM STALKER,)
OFFICER MICHAEL BAGGETT,)
OFFICER GILBERT GONZALEZ,)
AND OFFICER ASHLEA BRUSTER,)
OFFICER GEORGE MORALES.)
CITY OF SAN ANTONIO)
A MUNICIPAL CORPORATION)

DECLARATION OF JAMES W. MYART, JR.

My name is James W Myart, Jr.; I am over the age of eighteen and I am capable of making this Declaration. This declaration is beinme under the penalities of purury.

I say the following:

"I have had several conversons with Mr. Alan Warrick, member, SaAtonio City Counsel in connection with my automobile accifdent on March 25, 016 and the beating I sustained at rhe City of San Antonio Magistrate's office on Apr26, 2016."

" Mr. Warrick called me about the incidents and the City's desire to settle the case."

"Mr. Warrick called me and said, 'I saw the video tape of your beating by our employees. It was horrible.' 'James, what do you want me to do about it?'

"Mr. Warrick then said, 'You know that they can not offer you more money until you file a federal law suit.' I said, 'I plan to do just that Alan.'

"I then told Mr. Warrick that 'I do not want you to do anything for me, all I have ever wanted from you is good representation. But, you ld tell the ty manager to send this case to mediation.'"

" I concluded my conversation with Mr. Wark by saying'Just do the right thing Alan as my city councilman and what you think is best after seeing that video and, Alan, you and I should not speak again aout this issue becasue one of those idiots down there will use u of collussion.'"

"We then said bye and hung up."

"I have nit spoken with Mr. Warrick since that phone l to me from him."